

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of)
Developing a Unified Inter-carrier) CC Docket No. 01-92
Compensation Regime)

Reply of Missouri Independent Telephone Group
to
July 8, 2004 Written Ex Parte Communication
of T-Mobile USA, Inc.

Introduction

The 1996 Telecommunications Act provided wireless carriers with the ability to compel reciprocal compensation if they chose to do so. The state wireless termination tariffs T-Mobile USA objects to were necessary and appropriate for the Missouri Independent Telephone Group¹ (MITG). They were required in order to remedy the situation wireless carriers created by refusing to abide by regulatory and legal decisions in Missouri. T-Mobile's actions created the need for the tariffs. T-Mobile can avoid the tariff anytime it desires simply by completing the reciprocal compensation process the Act empowered wireless carriers with.

T-Mobile asks the Federal Communications Commission to grant wireless carriers the power to decide if they will accept state wireless termination tariffs. T-Mobile asks the FCC to provide wireless carriers with the authority to reject final regulatory and court decisions of the State of Missouri. No carrier should be granted the

¹ Alma Communications Company d/b/a Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial Inc., and Northeast Missouri Rural Telephone Company.

ability to ignore the sovereignty of any state in which it operates. Such a grant may be beyond the authority of the Federal Communications Commission to bestow. More importantly, it is unnecessary for the FCC to consider such a request.

T-Mobile asks the FCC to authorize wireless carriers to determine whether they will be subject to state tariffs on a “voluntary” or “opt-in” basis. T-Mobile postures this suggestion as a “compromise” position suitable for FCC adoption. It is not. It is an illusory offer of the “sleeves from T-Mobile’s vest”. It would sanction wireless carriers’ refusal to utilize the powers they were granted under the provisions of the 1996 Act. The FCC should reject T-Mobile’s request. The FCC should reinforce adherence to the negotiation/arbitration process set forth in the Act, rather than create sanction for departures there from.

The 1996 Act Created the Present Solution to T-Mobile’s Opposition to Tariffs

The 1996 Telecommunications Act for the first time introduced reciprocal compensation as a new form of compensation for local traffic. Reciprocal compensation was not automatically imposed with the effective date of the Act.² Rather, the Act set forth a process for wireless carriers to complete if they desired reciprocal compensation arrangements to displace existing compensation with any ILEC.³ The Act supplied wireless carriers with the power to compel reciprocal compensation.⁴ Had T-Mobile

² Indeed the Act could not have automatically imposed reciprocal compensation without unconstitutionally changing the revenue and expense structure of rate of return ILECs.

³ Section 252 provided that, upon approval of interconnection agreements, either voluntary or arbitrated, reciprocal compensation would then be established between the two parties to that agreement.

⁴ Section 252 provided that a carrier desiring to obtain reciprocal compensation would make the request of the ILEC, who had a duty to negotiate in good faith, as did the requesting carrier. (Contrary to T-Mobile’s suggestions, the reverse process was not contemplated by the Act. Although the ILEC could theoretically make a request of the wireless carrier, the wireless carrier was not required to negotiate, or to negotiate in good faith, and state commissions were not required to entertain arbitrations of negotiations initiated by the

exercised its power under the Act, there would be no tariffs to oppose. If T-Mobile exercises its power now, it can displace the tariffs it claims to dislike.

Missouri History

Missouri history shows the pattern wireless carriers are using to subvert the reciprocal compensation agreement process established in 1996. This pattern has deprived the MITG companies of terminating compensation for over six years, even while the wireless carriers agree the MITG companies deserve to be compensated. The wireless carrier pattern has aptly been described by the Missouri Court of Appeals as the “calculated inaction” of wireless carriers deciding not to complete the reciprocal compensation process, but then refusing to pay claiming that reciprocal compensation was the only compensation that could have applied.

Wireless carriers have accomplished this in the following manner: First, wireless carriers negotiate direct interconnection agreements with SBC. These agreements purport to cover traffic terminating to the MITG companies, but the MITG companies are not participants in the negotiations⁵. Then they send traffic through the SBC network to terminate to the MITG companies when there is no reciprocal compensation agreement with the MITG companies. The MITG bill under state tariffs, but the wireless carriers refuse to pay because they have no reciprocal compensation agreement in place.

MITG companies file complaints to address past uncompensated traffic. MITG companies file tariffs designed to address future traffic. When they are called before the Missouri Commission, the wireless carriers generate a request for reciprocal

ILEC.) After a specified time period for voluntary negotiations, either side could request arbitration, if necessary.

⁵ In its ex parte filing, T-Mobile appears to agree that reciprocal compensation agreements are for reciprocal transport and termination of local traffic exchanged between two carriers.

compensation negotiations with the MITG companies. The wireless carriers dislike the negotiating requests of the MITG companies, so they choose not to continue negotiations.

Wireless carriers then raise the same defense in the complaint and tariff proceedings. They attempt to defend by saying only reciprocal compensation can apply, and they have no reciprocal compensation because the MITG negotiating stance was unreasonable.

Now that it has lost the tariff case, and is nearing hearing on the complaints, T-Mobile asks the FCC to grant it power to ignore the decisions and tariffs of the state of Missouri. This request should be denied. Missouri history demonstrates that T-Mobile's request is inequitable.

In approving changes to SBC's Missouri wireless interconnection tariff in 1997, the Missouri Public Service Commission permitted wireless carriers to send to SBC traffic destined for small rural ILECs only if wireless carriers obtained reciprocal compensation agreements with the small ILECs before sending them traffic.⁶ The Commission specifically required the following language in SBC's tariff:

"Wireless carriers shall not send calls to SWBT that terminate in an Other Telecommunication Carrier's network unless the wireless carrier has entered into an agreement with such Other Telecommunications Carriers to directly compensate that carrier for the termination of such traffic."⁷

If T-Mobile had complied with this order there would have been reciprocal compensation arrangements. There would have been no need to make the request T-Mobile now makes.

⁶ See Missouri Public Service Commission December 23, 1997 *Report and Order* in TT-97-524.

⁷ Missouri Public Service Commission, *Report and Order*, Case No. TT-97-524, p. 22-3 (Dec. 23, 1997).

T-Mobile's actions in Missouri establish its knowledge it had to obtain reciprocal compensation in order to avoid application of state tariffs. T-Mobile exercised its power and obtained a reciprocal compensation with SBC⁸. T-Mobile did so in order to stop paying for wireless termination under SBC's state tariff. T-Mobile has not completed this same process with rural ILECs such as the MITG. T-Mobile has not done what the Act empowered T-Mobile to do in order to avoid application of MITG company tariffs.

T-Mobile sent traffic to the MITG companies in the absence of an approved agreement displacing state tariffs. Upon receipt of this traffic, the MITG companies billed this traffic under state tariffs. Some wireless carriers, including T-Mobile, refused to pay.

Upon receipt of the billings, some wireless carriers did make interconnection requests of the MITG companies. When they disliked the MITG companies' responsive negotiating requests, they simply dropped the negotiations and continued to send the traffic.⁹ They did not request arbitration, which was required to convert the negotiations to agreements. As wireless carriers knew the MITG companies could not block their traffic, they chose not complete the reciprocal compensation process.

In response to the refusal of wireless carriers to pay compensation, a large group of rural Missouri ILECs filed wireless termination tariffs applicable to local intraMTA

⁸ T-Mobile paid SBC under SBC's state wireless interconnection tariff until T-Mobile completed an interconnection agreement with SBC. There is no justification for T-Mobile's unspoken assumption that small rural ILECs should be treated differently than SBC. If there were legal justification for T-Mobile's request, T-Mobile should have objected to being subject to SBC's Missouri tariff before its reciprocal compensation agreement was approved.

⁹ T-Mobile characterizes this as a "collapse" of negotiations. In reality T-Mobile chose to walk away from negotiating the items requested by the MITG companies. T-Mobile did not negotiate, as it disliked the topics the MITG companies raised. Those topics included compensation for past uncompensated traffic, a request for direct connections so the MITG companies could measure their own terminating usage, a preference for call detail to assure appropriate compensation rates, and a rejection of T-Mobile's claim it was entitled to reciprocal compensation for landline-to-mobile traffic handled by interexchange carriers.

wireless traffic. By Order of February 8, 2001 the Missouri Public Service Commission approved these wireless termination tariffs.¹⁰ They were upheld by the Missouri Court of Appeal.¹¹

The Missouri Commission approved these tariffs because the wireless carriers had failed in their obligation to obtain agreements for the past three (3) years, because the tariff rates were *cheaper* than forward looking cost-based rates, and because all a wireless carrier needed to do to avoid the tariff was to complete the reciprocal compensation process established by the 1996 Act.¹²

The Missouri Commission recognized that, while reciprocal compensation would be a mandatory feature of a reciprocal compensation agreement, it was not a mandatory feature of state tariffs.¹³ Both the MoPSC and the Missouri Courts agreed that it was permissible to apply state tariffs in the absence of a reciprocal compensation agreement. There is no reciprocal compensation until there is an approved agreement. The Opinion of the Court of Appeals, in rejecting wireless carrier arguments that state tariffs could never be applied, hit the nail squarely:

“We disagree that federal law preempted the Commission’s authority to approve tariffs in the instant case. The Commission determined that the Act’s “reciprocal compensation arrangements” were inapplicable because no agreements were ever entered into by the wireless companies and rural

¹⁰ See Missouri Public Service Commission *Report and Order* issued February 8, 2001 in TT-2001-139.

¹¹ *State ex rel. Sprint v. Missouri Public Service Commission*, 112 S.W. 3rd 20 (Mo App W.D. 2003).

¹² Public Service Commission *Report and Order*, TT-2001-139, pp. 16-17, 23, 30, 41-2 (February 8, 2001).

¹³ “It is apparent from the Act that reciprocal compensation is a mandatory feature of agreements between the CMRS carriers and the small LECs. However, the record shows that at present there are no such agreements between the parties to this case. The Act does not state that reciprocal compensation is a necessary component of the tariffs of LECs or ILECs. Therefore, the Commission concludes that Section 251(b)(5) of the Act simply does not apply to the proposed tariffs herein at issue.” Page 24, MoPSC Report and Order of February 8, 2001.

carriers. The Act requires “local exchange carriers”—such as the rural carriers—to negotiate in good faith and establish compensation arrangements for the termination of traffic, but it does not impose the same obligation on wireless carriers...Although the wireless companies have done nothing to bring themselves within the purview of the Act, they now seek to invalidate the subject tariffs by claiming federal law must be applied. We agree with the Commission’s determination that federal law does not preemptively govern under the facts of this case....The tariffs approved by the Commission expressly state that they are subordinate to any negotiated agreements under the Act. Thus the Commission’s action does not prevent the negotiation of reciprocal compensation arrangements or otherwise conflict with the Act’s procedural requirements...The wireless companies have failed to follow prior Commission orders to establish agreements with the rural carriers before sending wireless calls to their exchanges. The rural carriers have a constitutional right to a fair and reasonable return upon their investment....The Commission cannot allow the wireless calls to continue terminating for free because this is potentially confiscatory....The tariffs reasonably fill a void in the law where the wireless companies routinely circumvent payment to the rural carriers by calculated inaction.”¹⁴

(emphasis supplied).

Some MITG companies have now gone over six (6) years without receiving compensation for the use of their networks. They have had to resort to years of collection litigation in order to rectify this wrong. Their complaint against T-Mobile is set for a hearing in September, 2004.

Other wireless carriers have resolved compensation for unpaid traffic with the MITG companies, and entered into reciprocal compensation agreements for future traffic,

¹⁴ 112 S. W. 3rd 25-26.

which have been approved.¹⁵ T-Mobile is one of the wireless carriers that has not resolved the issue.

Not only has T-Mobile refused to pay for local intraMTA traffic under state tariffs, T-Mobile has refused to pay for interMTA traffic under state tariffs. T-Mobile refuses to pay even though it acknowledges a large portion of the traffic is interMTA traffic subject to state access tariffs.

Conclusion

T-Mobile has failed to complete the reciprocal compensation processes in order to obtain reciprocal compensation with the MITG companies. The Missouri Commission and the Missouri Courts acted well within Missouri's police power in approving the tariffs. Missouri's rural ILECs, and their high cost customers, were served by ensuring compensation pending wireless carrier completion of the reciprocal compensation process set forth in the 1996 Act.

The MITG companies are ILECs. For purposes of reciprocal compensation, they are no different under the Act than SBC. They have equal stature to SBC as ILECs under the provisions of the 1996 Act. T-Mobile obtained reciprocal compensation with SBC in order to stop being subject to SBC's tariffs. T-Mobile has to obtain reciprocal compensation with the MITG companies in order to stop being subject to MITG tariffs.

The 1996 Act provided T-Mobile all of the tools it needs to obtain reciprocal compensation with the MITG companies. If T-Mobile were to use those tools, T-Mobile could avoid the tariff it complains of. There is simply no need for wireless carriers to

¹⁵ The wireless carriers that have entered into comprehensive resolutions include Cingular, Sprint PCS, and Verizon Wireless. Those that have not include T-Mobile, US Cellular, Western Wireless, Alltel, and AT&T Wireless.

ask the FCC to create this special power. There is simply no justification for the FCC to declare that wireless carriers have the power to unilaterally decide if it will accept a state tariff.

Respectfully Submitted,

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